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to enforce specific performance of a contract submits himself to the rule that he who asks equity must do equity, and if the contract sought to be enforced was entered into by the defendant vendor, under a misapprehension which was induced by the purchaser, so that it would be inequitable to enforce the same, relief will be refused unless it can be granted on conditions that will obviate the inequality.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 518.]

**6. Evidence (§ 434 (11)\*)—Parol Evidence to Show Fraud Admissible in Action for Specific Performance.**—Where, in a suit to enforce specific performance of a contract to sell lands, defendants asserted that the contract was entered into by their testator, the vendor, under a misapprehension caused by the purchasers, parol evidence is admissible to show the existence of the misapprehension, and that it was induced by the purchasers.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 520.]

**7. Vendor and Purchaser (§ 172\*)—Specific Performance Denied without Payment of Interest on Deferred Payments.**—In suit to compel specific performance of a contract for the sale of land, embodied in an option contained in a lease, which provided for payment on or about a fixed date of a portion of the purchase money and payment of the balance thereafter, held, that specific performance will not be enforced without payment by the purchasers of interest on deferred payments where they went into possession as lessees and continued the possession on exercising the option and making the down payment, and the vendor signed the contract under a misapprehension as to interest brought about by one of the purchasers.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 571; 13 Va.-W. Va. Enc. Dig. 513.]

Appeal from Circuit Court, Montgomery County.

Suit by one Barnett and another against Cloyd's Executors. From a decree for defendants, complainants appeal. Affirmed.

*H. C. Tyler*, of East Radford, and *Harless & Colhoun*, of Christiansburg, for appellants.

*H. C. Gilmer* and *John S. Draper, Jr.*, both of Pulaski, for appellees.

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COHEN *v.* JENKINS.

Sept. 17, 1919.

[100 S. E. 678.]

**1. Limitation of Actions (§ 85 (2)\*)—Bar of Judgment on Firm Debt.**—Under Code 1904, § 2933, a judgment against two copartners

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

recovered in 1896 is barred by 1918 as to the one remaining in the state, where the original execution was returned no property found, and a second execution issued in 1900 was never returned, notwithstanding the other copartner removed to and was residing in a foreign state when the second execution was issued; there being no attempt on the part of the remaining copartner to obstruct or delay collection of the judgment.

**2. Mortgages (§ 424\*)—Enforcement Denied after 20 Years' Delay.**—Twenty years' delay in enforcing a deed of trust after accrual of right of action will bar the same, Code 1904, § 2934, making such delay an absolute bar to any proceeding to enforce a deed of trust or mortgage.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 115.]

**3. Limitation of Actions (§ 85 (2)\*)—Absence of Debtor Does Not Bar Running of Statute against Mortgage.**—The absence of a debtor from the state creates no obstruction of the right to enforce a deed of trust on property situated within the state, and hence will not, under Code 1904, § 2933, excuse the effect of 20 years' delay in enforcement which is made a bar by section 2935 to any action for enforcing such obligation.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 419.]

**4. Vendor and Purchaser (§ 172\*)—Liability for Interest on Deferred Payments.**—Where a purchaser went into possession under an agreement that a deferred payment should be made when title to the property had been satisfactorily cleared, held, that the purchaser who retained the money was bound to pay interest on the amount from the time he went into possession, particularly where the title was marketable at the time he went into possession.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 513.]

Appeal from Circuit Court, Tazewell County.

Suit by W. E. Jenkins, against one Cohen. There was a decree for complainant, and defendant appeals. Affirmed.

*J. Powell Royall*, of Tazewell, and *L. J. Holland*, of Bluefield, W. Va., for appellant.

*Butts & Minter*, of Logan, W. Va., and *T. C. Bowen*, of Tazewell, for appellee.

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BLACKSBURG MINING & MFG. CO. *v.* BELL et ux.

Sept. 17, 1919.

[100 S. E. 806.]

**1. Mines and Minerals (§ 55 (8)\*)—Ambiguous Description of Mineral Deed Jury Question.**—Question whether deed, conveying

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.